

Progress and the Peril: HIV and the Global De/criminalization of Same-Sex Sex

REPORT 2023

This report is dedicated to the struggle of LGBTQ+ people, activists, and their allies in the push for decriminalization, equity, advancement of human rights, and against regressive criminalization, persecution, violence, and harassment.

This report would not have been possible without the support of UNAIDS and PEPFAR well as the work of International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) documenting reporting on laws criminalizing same-sex sexuality and recent prosecutions in its ILGA World Database and the ILGA monitor. We extend our appreciation for governments' and civil societies' contributions of national legal and law enforcement information to the UNAIDS' National Commitments and Policy Instrument, a component of Global AIDS Monitoring. We are also grateful to many of our partners, colleagues and activists for their assistance with legal analyses of law enforcement policies. We would also like to acknowledge the efforts of the student research assistants at the HIV Policy Lab for their time in collecting data and maintaining the database's quality, and particularly Abigail Rosenbaum for her dedication and support. We are grateful to Emily Bass for her valuable insights during the initial stages of the report, significantly shaping its format and structure. Finally, a note of deep appreciation to our colleagues, Alice Kayongo and Heena Patel, for their efforts to share the story of the progress and the peril in this report with communities, civil society, governments, and the media.

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Executive Summary

Executive Summary

Progress and the Peril: HIV and Global De/criminalization of Same-Sex Sex

Law is a key factor shaping how states respond to people facing a pandemic. In the context of confronting a virus, the law impacts who faces the highest risk of infection and death. A decade ago, the landmark report from the Global Commission on HIV and the Law joined AIDS movement calls for countries to remake their approach to same-sex sexuality, as criminalization undermines the AIDS response. Indeed, recent research shows that countries that criminalize consensual same-sex sexuality have made less progress against key global AIDS targets. In these countries, HIV rates among gay men and other men who have sex with men are higher and the gap with the general population is more pronounced.

The HIV Policy Lab (HIVPL) is a research and accountability platform that rigorously tracks and measures the HIV-related law and policy environment across 194 countries on 33 different issues ranging from policies on clinical care and HIV prevention to criminal and consent laws to policies on health system financing and beyond. On criminalization of consensual same-sex sexual acts, the HIV Policy Lab tracks two elements. First, we measure the de jure content of the law, as written, and whether national law refrains from criminalizing consensual same-sex sexual acts. Second, we measure whether a country avoids prosecuting people for same-sex sexual activity.

This HIV Policy Lab report documents a clear and ongoing trend toward decriminalization of consensual same-sex sex around the world. More countries removed punitive laws in 2022 than in any single year in the past 25 years. The data show that 13 countries—7% of the world—removed criminalizing laws since 2017. Decriminalization has been enacted in several of the world’s most powerful economies and countries with some of the highest HIV rates.

This represents a remarkable reversal. At the start of the AIDS pandemic, most countries in the world criminalized same-sex sexuality. But as of this year, two-thirds of countries do not criminalize, or 129 out of the world’s 194 countries tracked by the HIV Policy Lab. The tide has turned. Currently, 63% (24.6 million) of people living with HIV worldwide now live in countries where same-sex sex is legal. Meanwhile, 24 criminalizing countries in 2023 evidenced a de facto policy of non-enforcement, with no reported recent prosecutions. All of the countries that have fully decriminalized since 2017 adopted this approach of non-enforcement before law reform, showing an important pathway to change.

More and more countries are going beyond simply not criminalizing to establish clear non-discrimination laws that include LGBTQ+ people along with independent human rights institutions that can help monitor and support their rights. But of those countries that do not criminalize, as of this year, only about half have clear non-discrimination laws and policies and independent human rights institutions.

Amid this positive trend, the reverse is seen in some countries, where LGBTQ+ people are facing a dangerous counter-trend toward deeper, harsher criminalization and rising homophobia. One-third of countries maintain laws that make same-sex sex illegal. Of those, recent prosecution has been reported in 41 countries. Recent or pending legislation in several of these countries make penalties more extreme, including long prison sentences and even the death penalty and criminalization of service providers and families for not “reporting.” In addition, transgender and gender non-conforming people face intersecting legal barriers—often targeted under same-sex criminalization where it is illegal—and face a rising tide of laws even in some places where same-sex sexuality is legal.

In addition to cross-national data, this report documents the content and process of decriminalization in Angola, Antigua and Barbuda, Botswana, Cook Islands, Gabon, India, Mauritius, and Singapore. These case studies show there are many politically and legally viable pathways to decriminalization, with recent experience demonstrating that decriminalization is possible in a range of different contexts. Both judicially driven and legislatively driven processes have produced effective decriminalization, overcoming particular barriers to change. An essential element of law reform has been an aligned mix of change-makers and advocates within government, the judicial system, and civil society.

This data and case studies from this report suggest important lessons for the AIDS response. They underscore the importance of, and success produced by, investing in policy-change and law-reform efforts to decriminalize. These efforts will be critical to deliver on Sustainable Development Goal 3 and the commitment to reach those furthest behind first. There is a need to invest in law and policy change even in contexts where change seems difficult in the short term. Since decriminalization alone is not sufficient to achieve the full public health benefits of an enabling legal environment, this report shows why building independent human rights institutions and laws against discrimination as well as investment in community services and advocacy will be instrumental in bringing about change in the period ahead. A truly multisectoral AIDS response remains necessary because the positive changes documented cannot be driven by the health sector alone.

Introduction

Law is a key factor shaping how states respond to people facing a pandemic. When confronting a virus, law impacts who is at highest risk of infection and death. A decade ago, the landmark report from the Global Commission on HIV and the Law joined AIDS movement calls for countries to remake their approach to consensual same-sex sex as an integral part of the response to the AIDS pandemic. “Rather than punishing consenting adults involved in same-sex activity, countries must offer such people access to effective HIV and health services and commodities,” they wrote.¹ At the heart of this call was a recognition that states must choose whether to approach LGBTQ+ people as populations in need of services and the protection of the state and important participants in national response—an approach aligned with public health evidence and human rights obligations—or as people to be punished and criminalized. These two approaches stand in conflict. Even when deploying cutting-edge science, breakthrough biomedical tools, and a surge of services designed to reach gay men and other men who have sex with men (MSM), experience shows that law remains a critical factor. It can aid public health through protection or counteract it by increasing risk and driving people away from HIV services. Criminalization undermines efforts to end the AIDS pandemic.

This report documents a sustained trend in recent years toward abandoning criminalizing laws in countries throughout the world. More and more governments, at all income levels and in every geographic region, have decisively chosen to decriminalize consensual same-sex sexual acts under the law. Today, a clear majority of countries take a non-criminalizing approach—either because they never criminalized same-sex sex or because they have reformed their laws to decriminalize. Many countries with criminalizing laws on the books have avoided recent prosecutions under those laws.

These moves are helping progress against HIV. As described in detail in Findings Section 5 below, the evidence base is clear: In contexts without criminalization, MSM are less likely to

be living with HIV, are more likely to know their HIV status, and can access effective HIV treatment to achieve viral suppression at significantly higher rates. Transgender women, who often face some of the highest HIV rates worldwide, are also affected as they may be considered “men” under criminalizing statutes. In non-criminalizing contexts, the inequality in HIV rates between MSM and the general population of men is far smaller and HIV risk is reduced. And at the level of the entire population, more progress has been made in achieving globally agreed-upon HIV targets in non-criminalized contexts.

The decriminalization trend has been accompanied by a clear, coordinated counter-trend in which some governments are moving in the opposite direction—with laws and proposed bills deepening criminalization, imposing harsher punishment, and expanding the scope of criminalization, including in ways that impact those who may support and assist LGBTQ+ people. LGBTQ+ people in these contexts face increasing danger to their well-being, and the AIDS response faces growing challenges. And there are reasons to worry that fragile progress in some contexts could be reversed. Yet governments choosing criminalization are increasingly outliers, as fewer and fewer others share their approach and leading regional economic and political powers move more decisively away from criminalization. The work ahead for the AIDS response and for the lives of LGBTQ+ people is to secure and expand this trend.

“The battle for our rights, dignity, and quality of life has reached a fervent urgency. Repressive legislation looms, institutionalizing discrimination, prejudice, and violence against our communities, particularly those based on sexual orientation and gender identity. Yet, hope prevails through the growing movement for decriminalization, tearing down walls of discrimination and injustice.”

—
Florence Riako Anam

Co-Executive Director, Global Network of People Living with HIV

In order to reach the goal of ending AIDS as a public health threat by 2030, this trend must not only continue but accelerate—building the public health and rights-based legal contexts needed to more rapidly reduce HIV incidence and mortality. In the 2021 Political Declaration on HIV and AIDS, United Nations (UN) member states committed to “ensuring that less than 10 percent of countries have restrictive legal and policy frameworks that lead to the denial or limitation of access to services by 2025.”² The Global AIDS Strategy 2021-2026

set out a plan specifying a goal that less than 10 percent of countries criminalize same-sex sex.³ This report shows that important progress is being made on this aspect of the 10-10-10 goals, but that progress must accelerate to achieve them.

From major Asian and African economic leaders like India, Singapore, Angola, and Botswana to island nations like Barbados and Mauritius, this report shows that investing political, legal, and financial resources has advanced these

10-10-10 Goals To Be Met by 2025

< 10%

of countries have punitive legal and policy environments that deny or limit access to services

< 10%

of countries criminalize same-sex sexual relations

< 10%

of people living with HIV and key populations experience stigma and discrimination

< 10%

of women, girls, people living with HIV, and key populations experience gender inequality and violence

goals. When government leaders, civil society organizations, courts, and the media are aligned, it can open windows of opportunity for enabling law reform. A range of examples are featured in the case studies of this report, showing that multiple politically and legally viable pathways to decriminalization are available. While the barriers are many, diverse legislative and judicial routes have been taken—some of which might have been unimaginable just a few years ago.

Beyond the act of ensuring that consensual same-sex sexuality is not criminalized, many countries are taking proactive steps to provide legal protections against discrimination and to build independent human rights institutions capable of protecting rights—moves that provide important benefits to the AIDS response.

This HIV Policy Lab report proceeds through a series of findings and analyses. First, the

Findings section documents the current state of criminalization of same-sex sex worldwide, the trends toward decriminalization in recent years, and the gap that still remains to align law with public health. While the report mainly covers the state of play of laws criminalizing same-sex sex, it also looks at criminalization of gender expression and identity, protective laws such as anti-discrimination laws on sexual orientation and gender identity, and the role of independent human rights institutions in improving the legal environment for an effective response to AIDS. Two sections follow these findings, describing the public health and human rights obligations in greater detail, providing a summary of the evidence base and normative imperative toward decriminalization. The route from evidence to law reform, however, is far from straightforward—it is determined by political and legal contexts. Case studies of decriminalization close the report, describing these multiple pathways and lessons learned for the work ahead.

HIV, Inequality, and Criminalization



Global HIV prevalence:

- Gay men and other men who have sex with men vs. all adults: **11 x higher**
- Transgender people vs. all adults: **14 x higher**^a



Difference in HIV prevalence between MSM and other adult men in selected African countries:

- Non-criminalizing countries: **7.2 higher**
- Criminalizing countries: **24.8 higher**^b



Among the entire population:

- Knowledge of HIV status in non-criminalizing vs. criminalizing countries: **11.3% higher**
- Viral suppression in non-criminalizing vs. criminalizing countries: **8.1% higher**^c

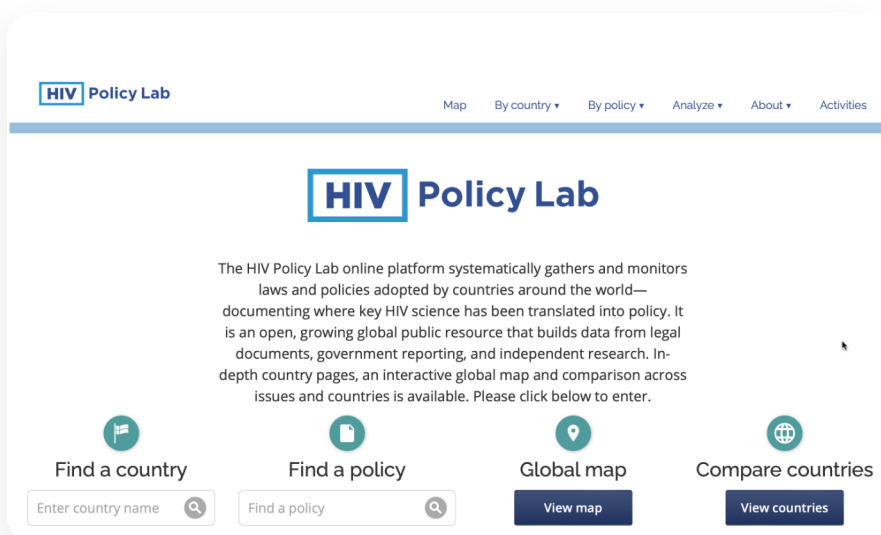
SOURCES: **a** UNAIDS, 2023 Global AIDS Update: The Path That Ends AIDS. **b** Lyons CE et al. Associations between punitive policies and legal barriers to consensual same-sex sexual acts and HIV among gay men and other men who have sex with men in sub-Saharan Africa. *The Lancet HIV*. 2023. **c** Kavanagh MM et al. Law, criminalisation and HIV in the world: have countries that criminalise achieved more or less successful pandemic response? *BMJ Global Health*. 2021.

HIV Policy Lab and Methodology

The HIV Policy Lab (HIVPL) is a research and accountability platform that rigorously tracks and measures the HIV-related law and policy environment across 194 countries on issues ranging from policies on clinical care and HIV prevention to criminal and consent laws, to policies on health system financing and beyond. The HIVPL consists of a dataset, index, and reference library and longitudinally captures and visualizes 33 different laws and policies (with a total of 52 indicators) in each of the 194 countries starting from 2017. Each of these indicators tracks whether or not a given country has “adopted” laws and policies that align with community and scientific consensus and global norms, based on the guidance of the United

University O’Neill Institute for National and Global Health Law. The sources for each specific country for each year can be found on HIVPolicyLab.org.

On criminalization of consensual same-sex sexual acts, the HIV Policy Lab tracks whether countries around the world are fully, partially, or not aligned with global guidance. We measure this with an indicator with two elements. First, we measure the de jure content of the law, as written, and whether national law refrains from criminalizing consensual same-sex sexual acts. Written law itself has important legal, social, and political effects—particularly relevant to HIV and key populations of gay men



HIV Policy Lab
(HIVPolicyLab.org)

Nations and other norm-setting bodies or in international law that incorporates within it the expertise and experiences of communities themselves. The HIVPL data visualization tool enables cross-country and cross-regional comparison of policy environments and equips global health actors, governments, civil society, and researchers with timely information on country and regional policy environments to make informed decisions. Information for these indicators comes from data and evidence gathered by over a dozen HIV Policy Lab partners, including the Joint United Nations Programme on HIV/AIDS (UNAIDS) Global AIDS Monitoring process, subject-specific efforts contributed by HIVPL partners, and legal research conducted by the Georgetown

and other men who have sex with men and transgender women, who globally face high rates of HIV. Information on this indicator specifically is collected from review of criminal statutes by the HIV Policy Lab legal team (which can be found on the HIV Policy Lab website) and data from the UNAIDS National Commitments and Policy Instrument (NCPI) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) database. The Global AIDS Strategy, the Global Commission on HIV and the Law, and guidance from UNAIDS, the United Nations Development Programme, and the World Health Organization (WHO) all recommend removing laws that criminalize consensual same-sex sex.³⁻⁷

Second, we measure whether a country's policy is to avoid prosecuting people for same-sex sexual activity. We label this as a de facto policy of non-enforcement, using a concept and term widely used in the literature on decriminalization⁸⁻¹⁴ and in studies of cross-national comparisons of law.^{15,16} It indicates decisions made by governments about when and who to prosecute, even under criminalizing laws. UN agencies have called for "establishing a moratorium on the application of laws that criminalize same-sex conduct between consenting adults."¹⁷ Some countries have done so. President Festus Mogae of Botswana, for example, ordered the police in the early 2000s to never arrest people based on same-sex sexual conduct.¹⁸ To capture this, we track whether there are reports of prosecutions for consensual same-sex acts in recent years (within three years). We use prosecutions to indicate evidence of government intention rather than the actions of an individual officer or agent of the state. Data on this indicator comes from NCPI and ILGA collected data as well as primary and secondary research by the HIV Policy Lab legal team through content analysis of reports by human rights bodies, NGO reports, and credible news media.^{19,20} We note that this data is necessarily imperfect and caution should be taken, particularly in the category of non-prosecuting countries with criminalizing laws. While we have done our best due diligence, there may well be cases where individuals have been, or are being, prosecuted that were not reported publicly and are not known to our partners, and therefore not identified during our research.

Using this data, this report maps where national law refrains from criminalizing consensual same-sex sexual acts; where national law makes same-sex sex a crime but where there is no evidence of a policy of prosecuting under the law or, in at least one case, vice versa; and the most harmful criminalized legal environments, where same-sex sex is illegal under national law and there is evidence of a policy of prosecution under the law. While these categories and the data behind them are imperfect, this gives the best available cross-nationally comparative view into the policy environment in which the national and

global response is working to end AIDS. While the HIV Policy Lab does not collect data on the criminalization of gender expression or identity, for the purposes of this report, data reported through the NCPI questionnaire are used.

Further information on methodology is included in the annex to this report.

The text of all of the laws referenced in the notes of this report is available online in the HIV Policy Lab Resource Library at www.hivpolicylab.org/sources.

Findings

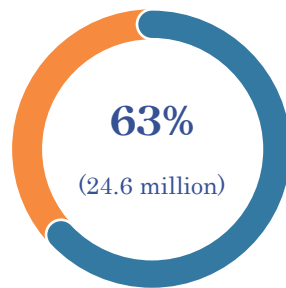
1

Progress: A Trend Toward Decriminalization

Between 2017 and 2023, 13 countries have removed laws criminalizing consensual same-sex sexual activity.* In 2022 alone, four countries—Singapore, Barbados, St. Kitts and Nevis, and Antigua and Barbuda—decriminalized consensual same-sex acts.^{21–24} In 2023, the Cook Islands and Mauritius joined them, and Venezuela removed its criminalizing military law.^{25,26} More countries decriminalized last year than in any other single year of the past 25.

This trend represents a remarkable reversal in criminalization since the start of the AIDS pandemic. The HIV Policy Lab shows that in 2017, 117 countries did not criminalize same-sex sexual activity under the law, and, as of September 2023, that had risen to 129—representing 66% of countries in the world.† At the start of the AIDS pandemic, the figures were reversed—over 120 countries and territories had statutes

criminalizing same-sex sexual activity.‡ From another point, since the start of the global AIDS response and the resolution establishing UNAIDS in 1994, 46 countries have removed criminal laws.§



Today, 63% (24.6 million) of people living with HIV live in countries where same-sex sex is not illegal.

Recently, countries from the regions of West and Central Africa, East and Southern Africa, Asia and the Pacific, Latin America, and the Caribbean and countries categorized as lower-middle, upper-middle, and high-income level have all decriminalized consensual same-sex sex. Since 2017, the fastest progress has been made in the Caribbean region, where the proportion of countries that criminalize same-sex sex in law has dropped from 71% in 2017 to 43% today.

* This includes Gabon, which criminalized and then decriminalized in this period—so the “net” gain was 12 countries when looking at 2017 to 2023.

† Note: Cook Islands, which is included in all calculations bringing the total countries to 194, is a member state to several UN specialized agencies, including WHO, but not a member state of the UN.

‡ Note: during this time period in the early 1980s, the number of UN member states changed significantly under decolonization, and so this figure represents countries now included in our database and the ILGA World Database, including some that were territories at the time.

§ Data on this point comes from HIV Policy Lab and from ILGA World Database.²⁷ For a long-term historical perspective, see Mignot (2022).²⁸

Figure 1: Decriminalization of Consensual Same-Sex Sex Under Law (2018-2023)[¶]

Note. Text of the new laws for each of these can be found in the HIV Policy Lab Resource Library at www.hivpolicylab.org/sources

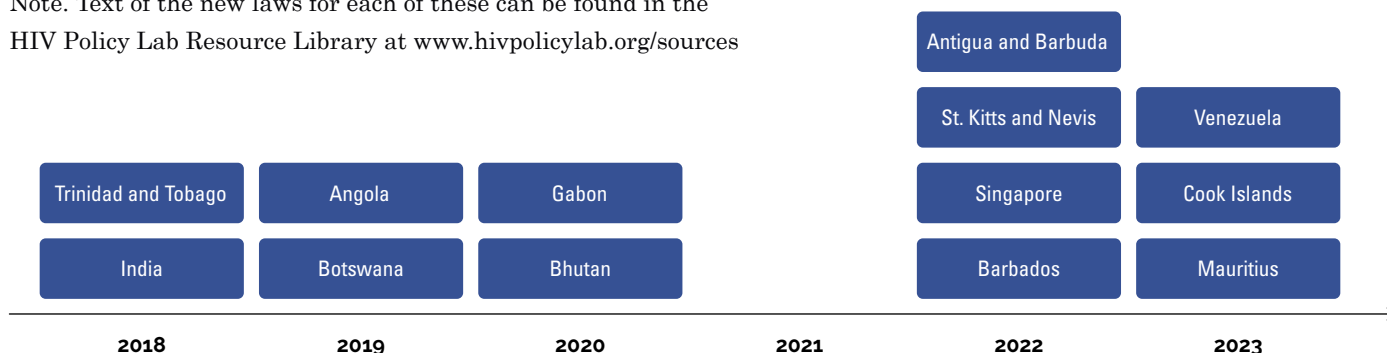


Figure 1 shows the countries that have decriminalized consensual same-sex sex since 2018. The routes of change are described in the case study section of this report.

In this period, one country, Gabon, newly criminalized in 2019 and then removed that law a year later.^{29,30} Indonesia introduced a new penal code that criminalizes sex outside of marriage, a law that will come into effect in 2026.^{31,#} As same-sex marriage is not recognized in Indonesia, where one province had already criminalized same-sex sexuality, this means same-sex sexual activity will be criminalized nationwide in Indonesia in 2026 unless that decision can be reversed before then.

One of the major recommendations of the Global Commission on HIV and the Law was placing an immediate moratorium on enforcement of laws criminalizing consensual same-sex sex, while advancing law reform.¹ For the AIDS response, this is an important policy choice available to countries and can be observed in

[¶] This report considers the year when the law was passed by the legislature or struck down through constitutional rulings as the year of decriminalization. As a result, for some countries, the year the law officially enters into force may be different from the year the law was passed or the judgment handed down.

[#] Note that there had previously been criminalization in Aceh province under Law No. 11 of 2006, which created a distinctive legal system within the national legal system with criminal code that criminalizes sodomy.

whether they avoid prosecution under harmful laws. For example, in both Jamaica and Namibia, a de facto policy of non-enforcement has been important, albeit insufficient, for LGBTQ+ communities.

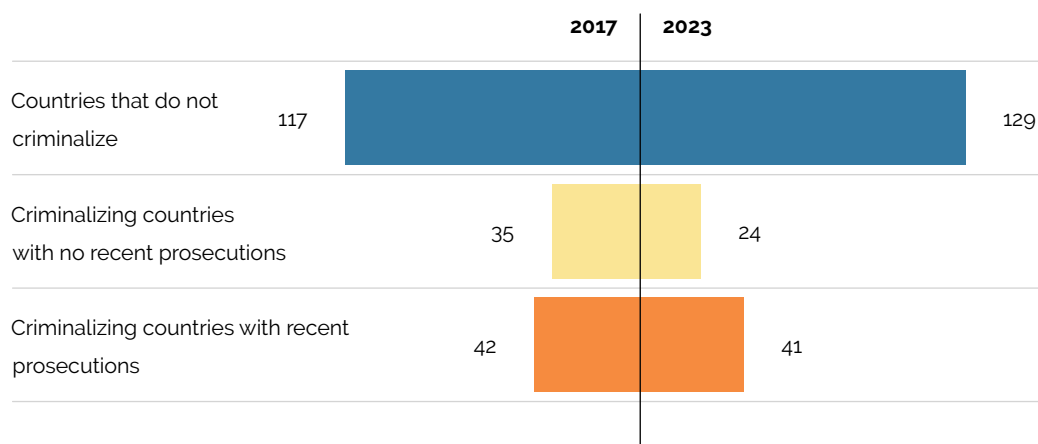
A recent study of sub-Saharan African countries using HIV Policy Lab data showed the ways that this second aspect of criminalization through a policy of active enforcement drives HIV.³² While MSM living under criminalizing law had five times the odds of living with HIV compared with those in non-criminalizing contexts, in countries with recent prosecutions, MSM had 12 times higher odds.

Every country that decriminalized same-sex sexuality between 2017 and 2023 previously had a de facto policy of non-enforcement (see HIV Policy Lab and Methodology section above for definition). In 2023, according to the best available information, 24 countries that still have criminalizing laws did not have a recent history of prosecution, signaling this de facto policy. In 2017, this number was actually higher, at 35^{**}, because it was these countries that engaged in decriminalizing law reform. This shows that, as the Global Commission and others hoped, there is indeed an important

^{**} Note that while 13 countries changed their law, the absolute number here is 11 because of countries that moved within categories, including, for example, Gabon, which criminalized then decriminalized in this period.

Figure 2:

**Criminalizing
Laws and
Evidence of
Policy
Enforcement of
Criminalizing
Laws**



pathway to law reform through moratoriums on enforcement.

As described in Section 3, even amidst this positive trend, progress has been met with coordinated counter effort leading to further regression and entrenchment including persecution of LGBTQ+ people communities in many countries, particularly where criminalization remains in place.

2

Status of Criminalization in the World: Law and Prosecution

As of November 2023, law in 129 countries (66% of the countries) does not criminalize consensual same-sex sexuality. There is significant regional variation in terms of the proportion of countries that do not criminalize same-sex sex. This includes nearly half (43%) of countries in Eastern and Southern Africa, more than half (52%) of countries in West and Central Africa, and 60% of countries in the Asia-Pacific region—the three regions with the largest

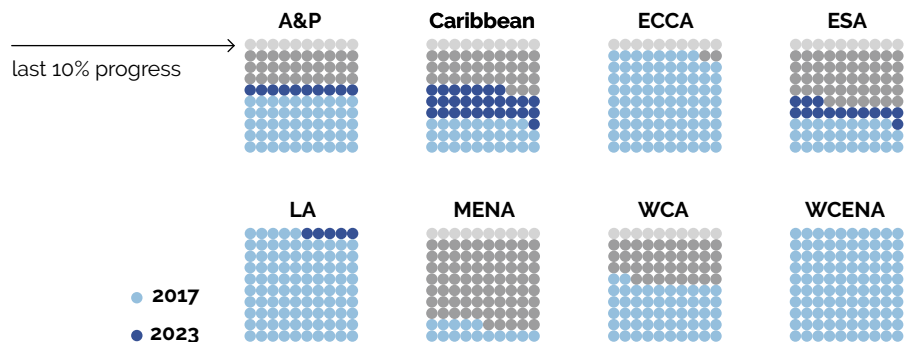
countries where consensual same-sex sexual activity is not criminalized.^{††}

However, 65 countries—34% of the world—still criminalize same-sex sexuality as of November 2023, reflecting a major threat to efforts to end AIDS by 2030 and continuing rights violations for LGBTQ+ people. Significantly more work is needed to reach the 10-10-10 targets. Among the countries that criminalize same-sex sex,

Figure 3:

Progress toward decriminalization of same-sex sexuality by region

A&P: Asia and Pacific, **ESA:** Eastern and Southern Africa, **ECCA:** Eastern Europe and Central Asia, **LA:** Latin America, **MENA:** Middle East and North Africa **WCA:** West and Central Africa, **WCENA:** Western and Central Europe and North America

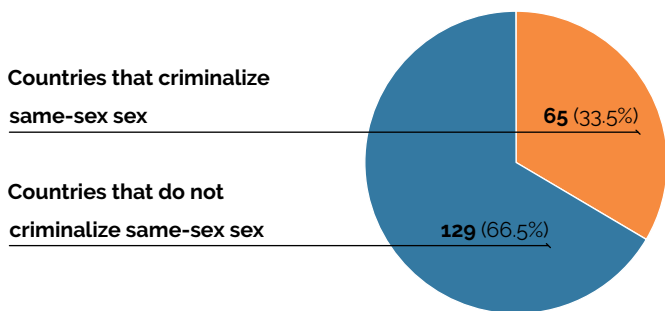


numbers of people living with HIV in the world. Both in Latin America and the Caribbean and in Eastern Europe and Central Asia, more than 80% of countries have adopted non-criminalizing laws (82% and 87%, respectively), while all the countries in West and Central Europe and North America have. The Middle East and North African region shows the lowest percentage of countries that do not criminalize same-sex sex. Bahrain, Djibouti, Israel, and Jordan are the only four of the region's 20

Uganda and Brunei are among those that deepened criminalizing penalties and extended them in recent years, as described further in

^{††} Note: Israel is classified as part of WCENA by UNAIDS and thus falls in this category for quantitative purposes in our data, but it is mentioned here in geographic context. <https://www.unaids.org/en/regionscountries/countries>

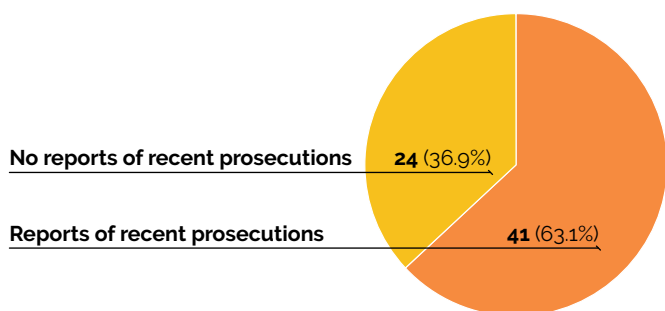
Figure 4: Countries that Criminalize Consensual Same-Sex Sex, 2023



Section 3 below.^{33,34} Chad was the most recent country to enact laws newly criminalizing consensual same-sex sexual acts, in 2017.³⁵ On the other hand, in response to significant international pressure, Brunei extended the moratorium on the death penalty to include cases under the new penal code.³⁶

Short of changing criminalizing laws, some countries have taken an important step in adopting a policy of not enforcing the laws criminalizing LGBTQ+ people. Twenty-four of the 65 countries with criminalizing laws appear to have a de facto policy of non-enforcement—with no reports of recent prosecutions identified (See Figure 5). On the flipside, 41 countries did

Figure 5: Evidence of Policy Enforcement of Criminalizing Laws (% of Countries with Criminalizing Laws), 2023



have reports of recent prosecutions of people for consensual same-sex activity—evidence of a policy of active enforcement and criminalization of same-sex sexuality. See Table 1 for the full list of countries.

The negative public health impact of criminalization is magnified where law and enforcement policy are combined—compounding stigma, discrimination, and fear that drives people away from health services.

Countries without recent prosecution may be well positioned for law reform in the near term—an important step toward achieving the 10-10-10 targets.

Figures 4 and 5 represents the legal and law enforcement environment on consensual same-sex sex in the world over time. If we combine countries that do not criminalize same-sex sexual activity with those that do not have recent prosecutions, this number rises to 153—or close to 79% of the world. While the legal and/or law enforcement environment are not by themselves reflective of the totality of experiences of LGBTQ+ populations, they form a strong foundation upon which a rights-based environment could be built.

In summary, among the 10-10-10 goals, this is the area where the greatest progress has been made. We can see a cascade of decriminalization: The most recent data available show that a little over 66% of countries do not have laws criminalizing same-sex sexuality, while another 12% have punitive laws but a de facto policy of non-enforcement. While this is important progress, full decriminalization is needed given the risk of undermining the AIDS response. Meanwhile, 21% of countries in the world actively criminalize--enforcing punitive laws--thereby posing a bigger risk to the AIDS response. If recent history is a guide, those countries with recent non-enforcement may be a roadmap for the clearest opportunity to full decriminalization. However, to reach the 10-10-10 targets, we will have to reach beyond these to secure decriminalization among those with active, enforced criminalization of same-sex sex.

Table 1: Countries That Criminalize and/or Prosecute on the Basis of Same-Sex Sex in 2023

Same-Sex Criminalization, 2023

Criminalizing Laws		Non-Criminalizing Laws			
Criminalizing Law and prosecutions (41)	Criminalizing Law with no reported prosecutions (24)	No Criminalizing Law or reported prosecutions (128)			
Afghanistan	Brunei Darussalam	Albania	Côte d'Ivoire	Madagascar	Slovenia
Algeria	Comoros	Andorra	Democratic	Mali	South Africa
Bangladesh	Dominica	Angola	People's Republic	Malta	Spain
Burundi	Eswatini	Antigua and	of Korea	Marshall Islands	Suriname
Cameroon	Grenada	Barbuda	Democratic	Mauritius	Sweden
Chad	Guyana	Argentina	Republic of the	Mexico	Switzerland
Egypt	Jamaica	Armenia	Congo	Micronesia	Tajikistan
Eritrea	Kenya	Australia	Denmark	(Federated States	Thailand
Ethiopia	Kiribati	Austria	Djibouti	of)	Timor-Leste
Gambia	Korea (Republic of)	Azerbaijan	Dominican Republic	Moldova (Republic	Trinidad and
Ghana	Lebanon	Bahamas	Ecuador	of)	Tobago
Guinea	Liberia	Bahrain	El Salvador	Monaco	Turkey
Indonesia	Namibia	Barbados	Equatorial Guinea	Mongolia	Ukraine
Iran (Islamic Republic of)	Oman	Belarus	Estonia	Montenegro	United Kingdom
Iraq	Qatar	Belgium	Fiji	Mozambique	United States of
Kuwait	Saint Lucia	Belize	Finland	Nauru	America
Libya	Saint Vincent and the	Benin	France	Nepal	Uruguay
Malawi	Grenadines	Bhutan	Gabon	Netherlands	Vanuatu
Malaysia	Samoa	Bolivia	Georgia	New Zealand	Venezuela
Maldives	Sierra Leone	(Plurinational State	Germany	Nicaragua	Viet Nam
Mauritania	Solomon Islands	of)	Greece	Niger	
Morocco	South Sudan	Bosnia and	Guatemala	Niue	Countries with no
Myanmar	Togo	Herzegovina	Guinea-Bissau	North Macedonia	criminalizing law
Nigeria	Tonga	Botswana	Haiti	Norway	but recent reported
Pakistan	Tuvalu	Brazil	Honduras	Palau	prosecutions (1)
Papua New Guinea		Bulgaria	Hungary	Panama	
Saudi Arabia		Burkina Faso	Iceland	Paraguay	Russian Federation
Senegal		Cambodia	India	Peru	
Somalia		Canada	Ireland	Philippines	
Sri Lanka		Cape Verde	Israel	Poland	
Sudan		Central African	Italy	Portugal	
Syrian Arab Republic		Republic	Japan	Romania	
Tanzania		Chile	Jordan	Rwanda	
Tunisia		China	Kazakhstan	Saint Kitts and	
Turkmenistan		Colombia	Kyrgyzstan	Nevis	
Uganda		Congo	Lao People's	San Marino	
United Arab Emirates		Cook Islands	Democratic	Sao Tome and	
Uzbekistan		Costa Rica	Republic	Principe	
Yemen		Croatia	Latvia	Serbia	
Zambia		Cuba	Lesotho	Seychelles	
Zimbabwe		Cyprus	Lithuania	Singapore	
		Czechia	Luxembourg	Slovakia	

3

Colonial History of Criminalization of Consensual Same-Sex Sex

In its recent ruling, the Supreme Court of Mauritius pointed out, “Section 250 was not introduced into Mauritius to reflect any Mauritian values but was inherited as part of our colonial history from Britain. Its enactment was not the expression of domestic democratic will but was a course imposed on Mauritius and other colonies by British rule.” This marks an important point in the current wave of decriminalization. Legal codes and laws criminalizing LGBTQ people and same-sex activity that were implemented in Europe proliferated throughout the colonial period, as Europe expanded its control over the world. Section 377A in the Indian Penal Code 1860 and its variations that were drafted during the British colonial era directly informed legislation in all parts of the British Empire and continue to inform criminalization provisions that exist in many countries, scarring the experiences of LGBTQ people.

In many countries, legislation and policies criminalizing same-sex sex bear a colonial history. In particular, countries that criminalize same-sex conduct are more likely to have been part of the former British Empire.³⁷ Out of 53 countries that belong to the Commonwealth or were formerly British colonies/territories, 38 of them criminalize same-sex conduct in 2023, most under colonial-era laws. About 34% of the world’s population, or 2.7 billion people, live in a former British colony or were part of the British Commonwealth, and yet these countries constitute more than half of the countries that criminalize same-sex conduct. This history belies the sense that criminalization of same-sex sex is “traditional” for much of the world.

4

Peril Amid Progress: Deepening Criminalization

Amid this global move away from criminalization, an unmistakable counter-trend is very clear, as some parliamentarians are actively seeking to deepen and intensify criminalization of same-sex sexual intimacy rather than removing it. In quite a few countries that already criminalize same-sex relationships, new laws and bills under consideration aggravate that criminalization by imposing harsher penalties, some including long prison sentences and even the death penalty for same-sex sexuality. Others are expanding the scope of criminalization, imposing sanctions on those who do not report others for same-sex sexuality or those who somehow support or assist affected populations, including gay men and other men who have sex with men, including as part of the AIDS response. Much of this momentum is coming through coordinated global political networks and funding using protection of “family” or “children” as the entry points.^{38–40} There are regional differences within countries, and LGBTQ+ civil society advocacy and legal opposition, with varying amounts of power and platform.

The first category of these countries is criminalizing speech related to LGBTQ+ people, often couched as “anti-propaganda” laws. Notably, this includes the United States, where dozens of state and local laws limit the availability of LGBTQ+ related reading material in schools and public libraries.^{41–43} Some politicians advancing this have acknowledged their reliance on the precedents set by Hungarian politicians in their far-reaching anti-LGBTQ+ propaganda laws, which

themselves build on Russian laws.^{44,45} Criminalizing speech regarding LGBTQ+ people, in and out of schools, criminalizes information and identities and disrupts advocacy for the health and rights of LGBTQ+ communities.

The second category of intensifying countries are those passing laws increasing criminal penalties for consensual same-sex sexual activities. Iraq, Ghana, and several other countries have legislators drafting increasingly harmful laws.^{46–50} These bills are not law but have been accompanied by increased hate speech and targeted violence toward organizations and for individuals perceived to be LGBTQ+. The bills deepening criminalization increasingly include the same sort of speech, advocacy, and “promotion” bans as the category above, in addition to increased penalties and reduced burdens of proof for same-sex sexual activity, as well as gender non-conforming dress. Uganda has passed and implemented the most expansive recent law, increasing penalties for same-sex sexual conduct up to life in prison or the death penalty in cases deemed to be “aggravated,” while also criminalizing an extraordinarily broadly defined “promotion” of homosexuality (inclusive of acts as wide-ranging as renting an apartment to an LGBTQ+ person, being on the board of directors for an LGBTQ+ organization, or a social media post in favor of LGBTQ+ rights) and creating a duty to report individuals suspected of being involved in homosexuality or other criminalized activities including the “promotion” of homosexuality.³³

5

Non-Discrimination and Protection Under the Law

Beyond removing criminalization, another important policy move among countries has been to use the law to protect LGBTQ+ people against discrimination and rights violations. Gay and bisexual men, other MSM, and trans women, who are globally at higher risk of HIV, are subjected to discrimination, violence, and exclusion even where they are not criminalized, with clear impact on their health.^{51–53} In recognition of the violence and discrimination faced by LGBTQ+ people, the UN Human Rights Council has adopted multiple resolutions, including in 2011 and 2016, and urged member states to protect against violence and discrimination on the basis of sexual orientation and gender identity.^{54,55} The 10-10-10 targets explicitly commit to action on not just punitive laws but on stigma and discrimination, against which law is a key tool. The global AIDS response has, for decades, understood protection of human rights as inextricably linked to stopping HIV transmission and AIDS mortality.^{1,56–58}

HIV Policy Lab research shows that non-discrimination laws and independent human rights institutions are associated with better progress on HIV testing and treatment goals.⁵⁹ We track two specific indicators: whether national laws include protections from discrimination on the basis of sexual orientation and gender identity (along with HIV status), and whether there is an independent national human rights institution to which rights violations can be reported.

According to HIV Policy Lab data, national law in 78 of the 129 countries that do not criminalize consensual same-sex sex includes anti-discrimination protections on the basis of sexual orientation (Figure 6), and 50 countries include anti-discrimination protection on the basis of gender identity (Figure 7). Forty-nine countries that do not criminalize same-sex sex have non-discrimination protections on the basis of both gender identity and sexual orientation.

Figure 6: **Anti-Discrimination measures on the basis of sexual orientation (Number of countries without criminalizing laws), 2023**

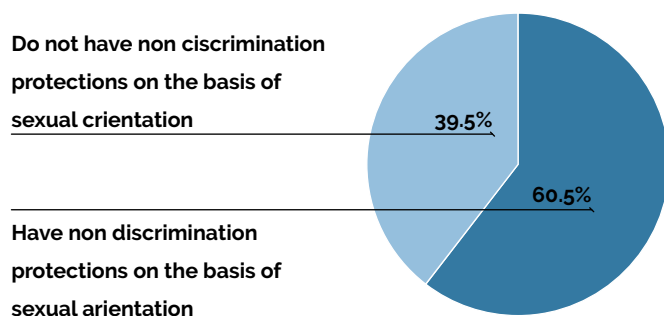
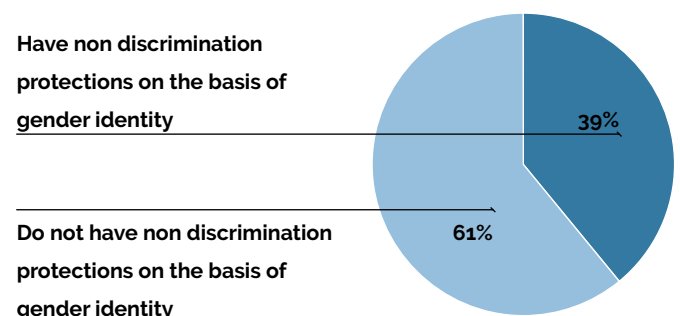


Figure 7: **Anti-Discrimination measures on the basis of gender identity (Number of countries without criminalizing laws), 2023**



In addition to strong legislative protections, independent human rights accountability mechanisms are a key element in protecting rights. Even in contexts of criminalization, strong rights bodies can help hold governments accountable for fair and equitable treatment and protection of important rights to health, education, association, speech, and other rights that help protect and empower communities. Adopted by the UN General Assembly in its Resolution 48/134 of 1993, the Paris Principles recognize the importance of establishing independent National Human Rights Institutions (NHRIs) and lay out the minimum requirements for their independent and effective functioning.⁶⁰ Compliance with the Paris Principles is indicative of credibility of the NHRI, its transparency in operation, and its effectiveness. Around the world, only 61 out of 129 countries that do not criminalize consensual same-sex sex have National Human Rights Institutions that are fully compliant with the Paris Principles, while 25 (out of 65) of those that criminalize do have independent NHRIs.

6

Transgender Identities and the Law

Globally, there are dueling legal momentums in relation to transgender rights. In some countries and communities, transgender rights activists and allies have successfully deployed legal and political strategies to secure increasing recognition and protection. In others, we see rising criminalization and legal exclusion.

Around the world, transgender and gender-diverse people are subjected to striking levels of violence and discrimination, sometimes sanctioned by law, that impact their health and well-being. Many transgender people face severe marginalization, exclusion, violence, and poor health and significant barriers accessing health care, whether gender-specific care or simply quality general health care.⁶¹ Adverse health indicators have been shown across high-income,

middle-income, and low-income settings.⁵² Exclusion ranges from danger and marginalization during forced migration to discrimination in humanitarian assistance during conflict^{62,63} to day-to-day challenges seeking education, employment, and housing.^{64–66}

Transgender people have an HIV prevalence worldwide approximately 14 times that of other adults.⁶⁷ During the acute phase of the COVID-19 pandemic, a recent study from Nigeria showed that compared to vulnerable cisgender women, trans women experienced significantly greater disruption in accessing HIV services, higher rates of gender-based violence, more insecure housing, and were even more likely to have to pay unofficial fees to get health care.⁶⁸ Data reported to UNAIDS shows that the percentage of transgender people who avoid seeking HIV testing due to stigma and discrimination in countries ranges from 47% to 73%.⁶⁹ These are all linked to forms of legal and social exclusion.

Criminalization of transgender people is complex. Trans women, for example, are often considered “men” under laws outlawing sodomy or same-sex sexuality and criminalized as

such when they have sex with men. Yet even in countries where consensual same-sex sex is not criminalized, they can be subjected to state-sanctioned violence and exclusion. National legal environments range from deliberately denying the existence of transgender people to criminalizing transgender identities, to setting onerous preconditions on their ability to participate fully in society—or a mix of all three.⁷⁰

In only a handful of countries are transgender people explicitly criminalized under a piece of legislation that makes “cross-dressing,” “impersonating the opposite sex,” or similar illegal.

- ILGA reported in 2020 that 13 countries had such laws.⁷¹
- Twenty countries reported to UNAIDS in 2023 that they criminalize transgender people.⁶⁷
- But there is clear evidence that in many more countries, public order offenses like indecency, vagrancy, and loitering are used systematically to subject transgender people to arrest and prosecution for their gender identity.^{71–}

75

Some countries are moving toward more human rights–based approaches, such as Spain’s legal reforms in February 2023, which allow for gender recognition procedures based on self-determination.^{76,77} In an important move, in 2022, Kuwait’s constitutional court struck down the law that criminalized “imitating the opposite sex,” which carried a prison term for cross-dressing.^{78–80} In 2018, the highest appellate court for Guyana, the Caribbean Court of Justice, struck down the vague cross-dressing laws that were used to harass and arrest transgender persons.⁸¹ As steps toward more enabling jurisprudence from Africa, South Africa’s Act 49 and section 7B of Namibia’s Births, Marriages and Deaths Registration Act 81 of 1963 allow transgender persons who have begun gender transition to change their gender markers on their identity documents.^{82,83}

But recent years have also seen a strong movement against greater protections for transgender and gender-diverse people. As of the writing of this report in November 2023, almost 600 anti-trans bills have been introduced in US state legislatures in this year alone,

according to the Trans Legislation Tracker.⁸⁴ Many of these bills make using bathrooms consistent with one’s gender identity a crime or have criminalized gender-affirming care for young people or adults.^{85,86} In November 2022, Russia passed a law that banned references to and conversations about homosexuality and gender identity in public spaces.⁸⁷ In May 2023, the Russian Parliament approved a bill outlawing gender-affirming care, which was then signed into law by the president.^{88,89} In the same month, Pakistan’s Federal Shariat Court struck down the 2018 protective legislation that enabled transgender persons to change their gender markers on official documents to match their gender identity;^{90,91} several appeals against this decision are pending.^{92,93} Earlier this year, in February, the Supreme Court in Bulgaria issued a ruling denying any possibility of legal gender change for transgender people.⁹⁴ Hungary appears to have been one of the first countries in Europe to pass a law banning legal gender recognition.^{95,96}

7

Public Health Evidence for Decriminalization

The public health evidence for removing the criminalization of consensual same-sex sex has grown and become clear. Around the world, gay men and other men who have sex with men, as well as transgender women, have higher rates of HIV than the general populations where they live.^{67,97} But the degree of risk varies based on their context. For example, MSM in Thailand have 12 times higher rates of HIV than all Thais, but in Malaysia the rates for MSM are 43 times higher than other adults.⁹⁸ One major difference is that in Thailand, same-sex sexuality has been decriminalized, whereas in Malaysia it is criminalized under law—and that criminalization is actively enforced.

Decriminalization of consensual same-sex intimacy is a necessary element in removing other structural barriers including stigma, discrimination, and socioeconomic factors that drive inequalities. Beyond removing criminalization, active anti-discrimination legislation and strong human rights institutions have strong public health benefits. An enabling legal and policy environment facilitates a full, comprehensive HIV response that meets the needs of all people at risk of and living with HIV. Comparative analysis of outcomes in countries with and without criminalization reinforces our understanding of the public health benefits of removing laws criminalizing same-sex sexual activity. The following section provides a summary of studies that assess the impact of criminalizing laws on health and HIV outcomes and, in reverse, the potential for public health benefits of moving from criminalization to protection under law.

Decriminalization opens pathways for engaging with public health and HIV services and facilitates an effective AIDS response, while criminalization drives inequality and hinders progress toward achieving HIV epidemic control.

Criminalization is linked to higher HIV rates.

- MSM living in criminalized settings had five times the odds of living with HIV compared with men living in settings without criminalization in African countries. MSM living in settings where criminalizing laws were enforced with recent prosecutions had 12 times the odds of living with HIV than individuals in settings without recent prosecutions, based on HIV Policy Lab data.⁹⁹
- The odds of contracting HIV are significantly greater in Caribbean countries that criminalize consensual same-sex sex than in those where such sexuality is legal.¹⁰⁰

Criminalization drives inequality in HIV.

- While there was a 7.2 point difference in HIV prevalence between MSM and other adult men in non-criminalized countries, in criminalized settings that difference was 24.8 points, among a set of African countries.⁹⁹
- The odds of contracting HIV in Black MSM relative to general populations were many times higher in Caribbean countries that

criminalize same-sex sex than for those living in countries where it is legal, according to an earlier study.¹⁰⁰

Criminalization undermines HIV services.

- In criminalizing countries, there is increased fear and hiding among MSM, decreased provision and uptake of HIV prevention services, and decreased uptake of HIV care and treatment services.^{101–103}
- Rates of ever having taken an HIV test, having taken an HIV test in the past 12 months, and knowledge of HIV status among MSM who live with HIV were 1.25 times, 1.4 times, and 3.2 times higher, respectively, in countries with the least severe anti-LGBTQ+ policies compared to the countries with the most severe anti-LGBTQ+ policies, according to a systematic review of 75 studies from 28 countries.¹⁰⁴
- Immediately after enactment of a harsh anti-gay law in Nigeria, both avoidance of health care and fear of seeking health care went up significantly.¹⁰⁵

Criminalization undermines the HIV response at a population level.

- Countries that criminalize consensual same-sex sex have significantly lower rates of both knowledge of HIV status and HIV viral suppression among all people living with HIV—8 percent lower viral suppression on average and 11 percent lower knowledge of status when compared to non-criminalizing environments in 2020.⁵⁹

Criminalization hinders accurate public health planning.

- Countries that criminalize same-sex conduct are likely to underreport population numbers of MSM. UNAIDS estimated in 2022 that more than 15 million people who are part of key populations and who would benefit from HIV prevention, care, and treatment services are unaccounted for in population-size estimates of all reporting

countries.¹⁰⁶

- This undermines planning for an effective HIV response because estimates are crucial to program planning, budgeting, and design. Underestimation of populations contributes to insufficient resource allocation for programs serving MSM, as well as a distorted picture of progress in addressing HIV.¹⁰⁷

Discriminatory legislation adversely affects health outcomes, including mental health and health-seeking behaviors; decriminalization supports effective health care.

- Studies in Botswana (before decriminalization), Malawi, and Namibia found that MSM were twice as likely to be afraid to seek health care and over six times as likely to be refused services than heterosexual people.¹⁰⁸
- The passage of anti-transgender legislation in the U.S. was linked to suicide- and depression-related internet searches, and the failure of anti-transgender bills was associated with fewer depression-related searches.¹⁰⁹
- After passage of a bill on gender-affirming care and identity, transgender people in Argentina reported a reduction in avoidance of the health care system due to discrimination—with only 5.3% avoiding health care settings out of fear of discrimination, compared to 41.2% prior to the enactment of the law. After the law passed, 12.7% reported teasing and assault by health care facility personnel, versus 40.2% before the law.¹¹⁰

8

Human Rights Obligations and Decriminalization

Not only does decriminalization of consensual same-sex sex have economic and public health benefits, but it is a necessary step to comply with international law. Obligations to protect the rights of LGBTQ+ people stem from a range of human rights obligations in core international human rights treaties, including non-discrimination, equal protection, and the rights to life, privacy, and health.¹¹¹ These obligations are further elaborated upon by the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.¹¹²

Discriminating on the basis of sexual orientation or gender expression and identity is a violation of human rights obligations. Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others, recognize the basic principles of non-discrimination and equal protection before the law.^{113,114} Sexual orientation and gender identity have been recognized as prohibited grounds of discrimination under international human rights law.¹¹⁵ The criminalization of same-sex sex clearly creates discriminatory and unequal protection for people of certain sexual orientations and gender identities, violating these human rights principles.

Applying the death penalty as a sanction against consensual same-sex sexual relations violates the right to life. The UN Human Rights Committee General Comment 36 states that

“[u]nder no circumstances can the death penalty ever be applied as a sanction against” same-sex relations.¹¹⁶ As indicated in the Human Rights Committee General Comment 36, all laws and policies sanctioning same-sex sex with the death penalty violate the basic human right obligation to protect the right to life.

Everyone is entitled to the enjoyment of privacy without arbitrary or unlawful interference. As early as 1994, the Human Rights Committee found in *Toonen v. Australia* that consensual sexual activities in private fall within the scope of the right to privacy under Article 17 of the ICCPR.^{113,117} The right to privacy includes the decision whether to disclose or not disclose information relating to sexual orientation or gender identity. The right to privacy also covers personal decisions and choices about consensual sexual relationships with others. Criminalizing same-sex sex arbitrarily and unlawfully interferes with the right to privacy, which is protected under international human rights law.¹¹¹

Failing to decriminalize consensual same-sex sex also undermines the right to health. Article 12 of the ICESCR recognizes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” regardless of sexual orientation and gender identity.^{114,118} Criminalizing, discriminatory, and punitive laws and policies undermine health outcomes by instilling fear of being arrested or prosecuted and fueling stigma and social exclusion.¹¹⁹ Further, the lack of rights-affirming laws and policies curtails the

LGBTQ+ community's ability to access essential health services without discrimination; health information tailored to their needs, including sexuality and sex education; and key social services like employment, housing, education, and health care.¹²⁰

The case-study section of this report elaborates the approaches taken by courts and legislatures in Angola, Antigua and Barbuda, Botswana, Cook Islands, Gabon, India, Mauritius, and Singapore. In each case, these rights stemming from core human rights instruments have played a part in the rationale and decision to decriminalize.

9

Economic Case for Decriminalization

The benefits of removing exclusionary legal environments include macro- and micro-economic impacts. At the macro level, there are significant economic costs of having punitive laws in place that foster homophobic environments. For example, a set of World Bank studies showed that the cost of homophobia in India could represent between 0.14% to 1.7% of gross domestic product (GDP).^{121,122} Globally, another study estimates the cost of homophobia at US\$126.1 billion per year, representing 0.17% of global GDP. A modelling study on the economic outcomes in over 132 countries between 1966 and 2011 found each legal measure improving the legal environment for LGBTQ+ populations was associated with a US\$2,000 increase in GDP per capita.¹²³ Across the scope of laws affecting these communities, moving from the most exclusionary legal environments to the most inclusive was associated with a US\$8,259 increase in GDP. These impacts were not accounted for by other factors.¹²⁴

As discussed above, criminalizing based on sexual and gender diversity also has an economically relevant public health impact by undermining the efficiency of health responses such as those for HIV^{125–127} or mpox.¹²⁸

At the microeconomic level, a range of forces operate on LGBTQ+ populations: lost labor time caused by arrests, prosecutions, and detention; lost productivity due to physical and psychological trauma that restricts their ability to fully participate in the workplace;

underinvestment in human capital due to missed opportunities and discrimination¹²⁹; and the inefficient allocation of human resources through discrimination in education and hiring practices.^{130,131}

Meanwhile, an increasing volume of work suggests a positive relationship between LGBTQ+ inclusion and benefits in the world of work. There is an association between LGBTQ+ anti-discrimination policies in firms and their performance.^{132–135} These data suggest that decriminalization and other steps toward creating LGBTQ+ inclusive legal environments benefits the economy.

**Legal and Political
Pathways to
Decriminalization:
National Case Studies**

Recent progress in decriminalization has taken place in countries against a backdrop of colonial legacies of criminalization, as well as a history of religious and cultural justifications.¹³⁶ A review of these countries where recent decriminalization has occurred shows that this has been achieved by both judicial and legislative approaches.

The following section provides select case studies of how countries pursued decriminalization of consensual same-sex sex through legislative or judicial approaches. This section also provides context, where available, on the critical role of civil society organizations in advocating for and contributing to the process of legal reform.

Case studies of Legislative Approaches

Mauritius

Mauritius enacted Section 250 of its Criminal Code in Mauritius in 1898, during British rule. Section 250 provided the offense of “sodomy,” criminalizing anal sex between consenting male adults in private. Following international caselaw, including judgements from other former colonies that enacted punitive laws during British rule, the Mauritian Supreme Court recently decriminalized same-sex sex by declaring Section 250 of its Criminal Code unconstitutional.

Support for repealing Section 250 had been building up for decades. In 2007, the Mauritian Law Reform Commission recommended the decriminalization of consensual anal sex between a man and another consenting adult.¹³⁷ That same year, then Attorney-General of Mauritius Jayarama Valayden introduced the Sexual Offenses Bill of 2007 in Parliament, which would have repealed Section 250 of the Criminal Code.¹³⁸ However, the Sexual Offenses Bill introduced in 2007 never passed in Parliament. Since 2007 the Mauritian Law Reform Commission had made further recommendations and presented draft provisions to repeal Section 250.¹³⁹ In 2017, the government of Mauritius still recognized a need to decriminalize “sodomy” but stated that it was no longer prioritizing an amendment of Section 250.¹⁴⁰ The government stated that legal reforms to decriminalize same-sex sex in the

country had to be first resolved by various stakeholders.

With the deprioritization of legislative efforts, the strategies to repeal Section 250 then pivoted to the courts. These litigations were supported by several civil society organizations, including the Collectif Arc-En-Ciel (CAEC), Young Queer Alliance (YQA), and Love Honor Cherish Foundation. In September 2019, Najeeb Ahmad Fokeerbux, Vipine Aubeeluck, Imesh Fallee and Jürgen Soocramanien Lasavanne filed a complaint against the constitutionality of Section 250 with support of the Young Queer Alliance and the Love Honor Cherish Foundation.¹⁴¹ All four are members of the Young Queer Alliance. The next month the current president of CAEC Abdool Ridwan (Ryan) Firaas Ah Seek separately requested the Supreme Court of Mauritius to declare Section 250 unconstitutional.¹⁴² CAEC also joined the case as an interested party. In October 2023, the Supreme Court of Mauritius decided the complaint against the constitutionality of Section 250 filed by Ah Seek with the support of CAEC²⁶ and the case filed by the four plaintiffs who members of the Young Queer Alliance.¹⁴³

Central to the Supreme Court decision was whether the word “sex” encompasses “sexual orientation.” “Sex” is one of the grounds explicitly protected against discrimination in the 1968 Constitution of Mauritius. Plaintiff Ah Seek argued that the word “sex” protected gay men from discrimination based on sexual

orientation. To examine this, the Supreme Court of Mauritius relied on various judgements from same-sex decriminalization cases decided in other jurisdictions. These included *Toonen*, decided by the United Nations Human Rights Committee¹¹⁷; *Orozco*, decided in Belize¹⁴⁴; *Johar*, decided India¹⁴⁵; and *Motshidiegang*, from Botswana.¹⁴⁶ All these cases examined the word “sex” and found that it protects against discrimination based on “sexual orientation.”

While recognizing that they were nonbinding, the Supreme Court of Mauritius found the *Toonen*, *Orozco*, *Johar*, and *Motshidiegang* cases to be “relevant, useful and persuasive guidance.” Since Mauritius has acceded to the ICCPR, the Supreme Court also found that the country “has accepted to adhere to international norms and standards” regarding fundamental rights and freedoms.

Pleading against decriminalization, the Mauritian government stated that amending Section 250 had been on its agenda but this “remains a highly sensitive issue in Mauritius in view of the delicate socio-cultural and religious fabric” of their society. Consequently, the government claimed that an amendment to Section 250 could only be introduced “when the necessary conditions favorable to its adoption in Parliament are present.” Rejecting these arguments, the Supreme Court explained that the country was a secular state. Importantly, the Court further explained that Section 250 was not a result of “domestic democratic will” nor “to reflect any indigenous Mauritius values.”²⁶ On the contrary, Section 250 was “a course imposed on Mauritius and other colonies by British rule.” The Supreme Court considered the fact that England had decriminalized same-sex sex but Section 250 remained on the books in Mauritius as a contradiction that needed to be remedied.

Declaring Section 250 of the Criminal Code unconstitutional remedied that contradiction.

Angola

Angola inherited the Portuguese Criminal Code (1886), which remained in force until

2019, when the country adopted its first new penal code after its independence from Portugal in 1975.¹⁴⁷ Article 71(4) of the Angolan Penal Code of 1886 penalized “vices against nature,”¹⁴⁸ an offense that could have been interpreted as criminalizing consensual same-sex sex. In 2019, the Angolan National Assembly passed the Penal Code of Angola with overwhelming support, 155 to 1.¹⁴⁹ Signed by the president on November 11, 2020, the law entered into force in February 2021. The Penal Code of Angola, approved under Law No. 38/20, decriminalizes same-sex conduct and provides non-discrimination protections on the basis of sexual orientation, among other factors, under Article 212, within the contexts of employment, the supply of goods or services, the exercise of economic activity, and entry into a public or private establishment.¹⁵⁰ The violation of Article 212 is punishable by up to two years imprisonment. Article 212 of the new Penal Code failed to explicitly mention gender identity among the grounds protected against discrimination. Nevertheless, in addition to sexual orientation, the new Penal Code protects against “any other form” of discrimination.¹⁵⁰ Angola’s legal reform is a key step toward eradicating discrimination against and structural barriers faced by the LGBTQ+ community, especially in relation to access to health or other social protections.^{147,151}

Angola’s civil society has been a driving force for law reform. In 2013, seven years before Angola passed the law decriminalizing same-sex sex, a group of activists formed IRIS Angola Association (*Associação Íris Angola*) to defend the rights of the LGBTQ+ community and actively advocated for law reforms.^{152,153} However, as the country’s leading LGBTQ+ organization, it was only formally registered as an entity several years after its establishment,¹⁵⁴ and it was the first civil rights organization advocating for the rights of the LGBTQ+ community registered by the Angolan government.¹⁵² With the support of pan-African NGOs such as African Men for Sexual Health and Rights, IRIS Angola played an important role in the legal reforms around same-sex sex.¹⁴⁹ Meanwhile, the United Nations Development Programme (UNDP) Linking

Policy to Programming was a regional project that ran from 2016 to 2020, aiming to improve sexual and reproductive health outcomes for young key populations in Angola, Madagascar, Mozambique, Zambia, and Zimbabwe.¹⁵⁵ Civil society groups, together with partners, pushed for the decriminalization of same-sex relationships in Angola.¹⁵⁶ However, despite these positive legal developments, several challenges persist for civil society, particularly in regard to the legal environment for key population-led organizations. Several other LGBTQ+ organizations, including Associação Íris Angola, H Maiúsculo, The Divas, and Mulheres de Coração, have expressed difficulties in their operations due to challenges in obtaining legal recognition, which in turn impacts their access to funding.¹⁵⁴

Singapore

In Singapore, Section 377A of the Penal Code (1871) criminalized “any act of gross indecency between males.”¹⁵⁷ In 2007, a petition to Parliament calling for the repeal of the Section 377A of the penal code criminalizing consensual same-sex sex was filed.¹⁵⁸ Although recognizing that homosexuals are “kith and kin” in society, the prime minister of Singapore stated in a 2007 parliamentary debate that the country had not yet reached “a broad social consensus” on whether homosexuality was “acceptable or morally right.”¹⁵⁹ As a result, Section 377A was retained, but the government reiterated that the provision would not be proactively enforced, a move that was seen as a way to balance the setback of gay rights.¹⁵⁸ Civil society groups such as Pink Dot, Ready4Repeal, and Heckin’ Unicorn, however, continued to drive efforts toward law reform in Singapore.¹⁶⁰ Well-attended annual pride events such as Pink Dot and online movements such as #Ready4Repeal were powerful advocacy platforms used by civil society to increase the socialization and social acceptance of LGBTQ+ communities.^{161,162}

Though the eventual repeal of Section 377A came legislatively, legal challenges were a key part of the pathway to repeal. The tacit guarantee of non-enforcement was challenged in

2010, following the arrest of Tan Eng Hong for committing an act of “gross indecency” in a public restroom, giving rise to the first judicial challenge to Section 377A with regard to its constitutionality.¹⁶³ Meanwhile, a gay couple, Lim Meng Suang and Kenneth Chee Mun-Leon, also instigated another constitutional challenge. The High Court ruled on both challenges in two separate decisions, Meng Suang and another v. Attorney-General [2013] 3 SLR 118164 and Eng Hong v. Attorney-General [2013] 4 SLR 1059,¹⁶⁵ holding that Section 377A did not violate Singapore’s Constitution. In 2014, the Court of Appeal heard these two cases together and upheld that Article 377A does not infringe upon Articles 9(1) and 12(1) of the Singaporean constitution.^{166,167} Energized by the Indian Supreme Court’s ruling in September 2018, Johnson Ong Ming filed a new case to challenge Section 377A, followed by two other cases filed separately by LGBTQ+ activists, Bryan Choon and Tan Seng Kee.^{168,169} All three cases were dismissed by the High Court in Ong Ming Johnson v. Attorney-General and other matters [2020] SGHC 63.¹⁷⁰ On appeal, in Tan Seng Kee v. Attorney-General and other appeals [2022] SGCA 16, the Court of Appeal once again declined to rule Section 377A as unconstitutional.¹⁷¹ However, the ruling referenced a 2018 statement made by the attorney general underscoring that the government stressed that police would not proactively enforce this provision and that prosecution would not be in the public interest in cases where “offenses” under Section 377A are committed between two consenting adults in a private place.¹⁷² The court considered that this statement generated “substantive legitimate expectations” of non-prosecution under the prosecutorial policy—an action taken by many governments—and may be an indicator of the evolving and more lenient perspectives of lawmakers toward LGBTQ+ communities, preceding more significant legal reforms.¹⁷¹

The Singaporean government eventually repealed Section 377A in 2022,²¹ but not before engaging with the general populace through a unique survey, the first of its kind in Singapore, assessing their views on the LGBTQ+ community and the criminalizing provision

Section 377A.^{173,174} The survey, launched by the government's official feedback unit, REACH, was reported to have garnered far higher numbers of responses than other typical national surveys.^{173,174} Substantial efforts from local civil society organizations contributed to the promotion of the survey, representing a step toward greater inclusion of LGBTQ+ matters in public discourse and involving the public in matters of legal recourse.^{173,174} The decision to repeal the criminalizing provision was announced in a televised speech at the National Day Rally in August 2022,¹⁷⁵ and the Penal Code (Amendment) Act 2022 repealing Section 377A of the Penal Code 1871 was passed in November 2022.²¹ At the same time, Parliament also passed a constitutional amendment on civil unions in Singapore emphasizing that the state, ostensibly safeguarding "traditional family values," established marriage within the framework of heterosexual relationships, specifically between men and women.¹⁷⁶

Cook Islands

The journey to reform the law criminalizing consensual same-sex sex in Cook Islands featured important work by civil society and government groups linked to the AIDS response, including the country's oldest operating LGBTQ+ organization, Te Tiare Association. Under the Crime Act of 1969, same-sex sex was criminalized under Section 154 (indecent between males), Section 155 (sodomy), and Section 159 (hosting homosexual activities in one's premises) of the Crime Act 1969.¹⁷⁷ These were punishable with imprisonment up to 10 years. Subsequently, the 2013 Crimes Bill removing these discriminatory clauses was drafted and reviewed by the Standing Committee set up by Parliament in 2017.^{178,179} The same year, Parliament discussed a draft bill to decriminalize same-sex sexual conduct between consenting adults.¹⁸⁰ UNDP provided assistance to civil society for the development of petitions outlining the public health benefits of legal reforms.¹⁷⁸ However, a subsequent change in political leadership left the status of the bill in uncertainty for the next two years. The unsupportive political climate inspired formation of Pride Cook Islands, a

sister organization to Te Tiare Association with a focus on public advocacy.¹⁷⁸ In subsequent years, civil society groups maintained close communication with policymakers and traditional leaders of grassroots organizations to understand concerns and dispel misperceptions. They launched several visibility initiatives to spread awareness and acceptance of LGBTQ+ people. Groups also used polls to help gauge public sentiment and advocacy, which helped garner government support for the Amendment Bill, including backing from the opposition leader. In 2023, Parliament passed the Crimes (Sexual Offences) Amendment Bill, repealing the offenses of indecency and sodomy in the Crime Act 1969.^{181,182} The new law entered into force on the first day of June 2023.²⁵ The decriminalization of same-sex sex in Cook Islands follows the examples of Fiji, Palau, and Nauru. However, as of 2023, 40% of countries in the Asia-Pacific region continue to criminalize same-sex sex.

Gabon

In 2020, Gabon's Senate voted to decriminalize consensual same-sex sexual relations.^{30,183} Unlike many of its African neighbors, Gabon's colonial history did not leave it with a criminalizing statute. However, when the National Assembly was suspended in December 2018, the Senate amended article 402(5) of the Penal Code, criminalizing consensual same-sex conduct and making it punishable with imprisonment for up to six months and a fine of up to 5 million CFA (Communauté Financière Africaine) francs (equivalent to around US\$8,100).²⁹ The amended law went into force on July 5, 2019.

Nevertheless, the law was short-lived. The new government elected in 2019 supported decriminalization of same-sex sex and introduced a bill to repeal the law, which gained bicameral support in June 2020.^{184,185} The new bill was signed into law in July 2020, a year after Gabon instituted criminal penalties on same-sex sex.

Case Studies of Judicial Approaches

Botswana

The penal code of Botswana was promulgated in 1964, before its independence from an 80-year British rule. Section 164 of the Penal Code criminalized “carnal knowledge against the order of nature” and one who “permits any other person to have carnal knowledge of him or her against the order of nature.”¹⁸⁶ Section 165 criminalized “attempts to commit any of the offences specified in section 164.” Section 167 penalized “acts of gross indecency” between persons.¹⁸⁶ The constitutionality of such offenses was first challenged in 2003 in *Kanane v. The State* [2003] 2 BLR 67 (CA), in which the definition of “carnal knowledge against the order of nature” had been held to refer to “sexual intercourse per anum.”¹⁸⁷ In this case, the court declared that “the time has not yet arrived to decriminalize homosexual practices even between consenting adult males in private.” While Botswana’s criminal laws on consensual same-sex sex were rarely enforced, the legislation proved a structural barrier to providing and receiving HIV and other health services and reinforced systemic discrimination against LGBTQ+ populations. A key moment in the fight to improve laws for LGBTQ+ people came around the struggle to register the civil society organization Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) as a society under the Societies Act to advocate for and affirm the rights of Botswana’s LGBTQ+ population.¹⁸⁸ After years of activism and numerous attempts, Botswana’s highest court, the Court of Appeal, ordered the government to register the organization in 2016.^{189,190} However, at the time, same-sex sex remained illegal, which made the position of this group tenuous.

On September 28, 2016, Letsweletse Motshidiemang filed a notice of motion in the High Court seeking Sections 164(a)(c), 165, and 167 to be declared unconstitutional for being

vague, discriminatory, and interfering with an individual’s fundamental right to liberty and protection against inhumane and degrading treatment.¹⁹¹ Mr. Motshidiemang disclosed his sexual orientation as gay and asserted that his right to liberty, dignity, and privacy had been infringed upon due to Section 164.¹⁴⁶ In this case, LEGABIBO was admitted as *amicus curiae* in 2017 and presented scientific evidence showing that the criminalization of same-sex sex inhibited LGBTQ+ people from effectively accessing medical treatment.^{192,193} Subsequently, in 2019, in *Letsweletse Motshidiemang v. The Attorney General*, the Court ruled these offenses unconstitutional because of their inconsistency with Section 3 (equal protection), Section 9 (right to privacy), and Section 15 (non-discrimination) of the Constitution.¹⁹¹ Botswana’s Court of Appeal upheld the ruling with the explicit stance that the offenses “serve only to stigmatize gay men unnecessarily” and “serve only to incentivize law enforcement agents and others to become key-hole peepers and intruders into the private space of citizens.”¹⁴⁶ After the judgment, the president promised to comply with the decision through the principles of democratic governance and the rule of law.¹⁹⁴ Civil society in Botswana also closely monitors compliance with court decisions and urges Parliament to reject new bills that may be introduced to override judicial powers.¹⁹⁵

India

In 2018, India’s Supreme Court unanimously ruled that criminalization of consensual same-sex sex is unconstitutional.^{145,196} Section 377 of the Indian Penal Code, introduced during British rule in 1860, classified consensual sex between same-sex individuals as an “unnatural offense” punishable by imprisonment of up to 10 years.¹⁹⁷ The provision became a model law that was replicated in several then-British colonies across Asia and Africa.

The repeal of Section 377 and decriminalization of same-sex sex conduct resulted from decades of civil society efforts, led by LGBTQ+ and HIV organizations like AIDS Bhedbhav Virodhi Andolan, which together built a movement for legal reforms.¹⁹⁸ This movement included a diverse set of organizations that used multiple tactics to advance decriminalization including political mobilization, engagement of legislators and the media, alongside litigation strategies, fueled by the need to address the violation of fundamental rights of queer people. The Lawyers Collective provided the legal aid and convened the extensive community consultations that galvanized litigation efforts that became the Naz case.¹⁹⁹

The Naz Foundation, an organization headquartered in Delhi, provided HIV and sexual health services for LGBTQ+ communities and became a lead actor because criminalization impeded its work, making it abetting a crime. In a public interest litigation petition to the Delhi High Court, Naz argued Section 377 should be declared unconstitutional because it violated numerous fundamental rights of LGBTQ+ people. After years of mobilization and litigation, the High Court held in *Naz Foundation v. Govt. of NCT of Delhi* in 2009 that Section 377 violated several provisions, including equality before law (Article 14), non-discrimination on the ground of sex (Article 15), and the right to life and personal liberty (Article 21), guaranteed by the Constitution insofar as it criminalized consensual sexual acts of adults in private.²⁰⁰ However, the ruling was reversed in 2013 by a two-judge bench of the Supreme Court of India in *Suresh Kumar Koushal and another v. Naz Foundation and others*.²⁰¹ The court held that since the offense applied irrespective of age and consent and regardless of gender identity and orientation, it did not target LGBTQ+ persons.

The recriminalization was a low point for the movement, but was challenged again through community mobilization and the filing of fresh petitions in 2016.¹⁹⁹ Eventually, in 2018, in the case of *Navtej Singh Johar v. Union of India*, a five-judge bench of the Supreme Court held that Section 377 was unconstitutional, insofar as it

applied to consensual sexual conduct between adults in private, and violated equality before law (Article 14), the right to non-discrimination (Article 15(1)), freedom of expression (Article 19(1)(a)), and the right to privacy, dignity, autonomy and decision-making, and health under the right to life and personal liberty (Article 21) guaranteed by the Constitution.¹⁴⁵

Antigua and Barbuda

In the Eastern Caribbean, there have been a series of cases to challenge colonial laws criminalizing consensual same-sex sexual activity in recent years.^{22,23} To address the stigma and discrimination faced by LGBTQ+ citizens in countries in the Eastern Caribbean, in 2015, a litigation and advocacy meeting titled Eastern Caribbean Litigation, Advocacy and Strategy was organized by United and Strong of Saint Lucia and GrenCHAP Grenada for local civil society organizations in Grenada.²⁰² As an outcome of this meeting, a regional hub now identified as the Eastern Caribbean Alliance for Diversity and Equality (ECADE) was created to advance and convene, among other things, a litigation process in five countries in the Eastern Caribbean, including Antigua and Barbuda, St. Kitts and Nevis, Barbados, Saint Lucia, and Grenada.²⁰³ In 2022 alone, the courts in three of the countries that were part of the litigation strategy in the Eastern Caribbean region (Barbados, St. Kitts and Nevis, and Antigua and Barbuda) struck down laws criminalizing private, consensual same-sex sexual activity as infringing on the fundamental rights of the claimants guaranteed under the individual country constitutions.²²⁻²⁴

On July 5, 2022, the Antigua and Barbuda High Court, in its judgment in *Orden David and others v. the Attorney General of Antigua and Barbuda*, struck down colonial-era provisions under the Sexual Offences Act of 1995 that criminalized private, consensual same-sex sexual activity.²⁴ The case was brought forward by Orden David, the president of Meeting Emotional and Social Needs Holistically, and representatives of civil society from Women Against Rape, an organization serving marginalized and vulnerable communities

including survivors of gender-based violence.²⁰⁴ The claimants argued that laws against same-sex relationships in Antigua and Barbuda criminalizing private, consensual same-sex sexual activity between persons aged 16 or older offended the Antigua and Barbuda constitutional rights to liberty, protection of the law, freedom of expression, protection of personal privacy, and protection from discrimination on the basis of sex, as guaranteed under Sections 3, 12, and 14 of the Constitution.²⁴

The case concerned Sections 12 (buggery) and 15 (serious indecency) of the Sexual Offences Act of 1995, in which buggery is defined as “sexual intercourse per anum” and serious indecency is defined as “the use of the genital organ for the purpose of arousing or gratifying sexual desire.”²⁰⁵ For the offense of buggery, consensual adult sex could be punished with imprisonment for 15 years. For the offense of serious indecency, offenders could be imprisoned for up to 10 years if committed toward a minor and five years if committed toward a person 16 years and over. The exemption for the offense of serious indecency applied only to heterosexual acts.²⁰⁵ The case was brought before the Court to decide whether Sections 12 and 15 of the Sexual Offences Act of 1995 infringed on personal liberty and protection of the law (the sections on rights (3a), freedom of expression (3b and 12), privacy (3c), and non-discrimination on the basis of sex (14)) of the Antigua and Barbuda Constitution.²⁴ In its decision, the Court found that Sections 12 and 15 of the Sexual Offences Act 1995 “offends the right to liberty, protection of the law, freedom of expression, protection of personal privacy and protection from discrimination on the basis of sex,” in so far as Sections 12 and 15 of the Sexual Offences Act 1995 are inconsistent with the rights of persons 16 years and older to engage in consensual sexual activity in private. To the extent of that inconsistency, Sections 12 and 15 of the Sexual Offences Act 1995 were deemed void.²⁴ While Antigua and Barbuda, Barbados, and St. Kitts and Nevis decriminalized same-sex sexual activity in 2022, six former British colonies in the Caribbean continue to retain laws criminalizing same-sex sexual activity, with

similar legal proceedings underway in many of the countries.

Conclusion: Future of the AIDS Response

As of this year, two-thirds of countries around the world do not criminalize consensual same-sex sex—a reversal of where the world stood at the start of the AIDS pandemic. This has helped secure important gains in the global AIDS response. Meanwhile, other countries with criminalizing laws are not actively enforcing those laws—which this report shows has been an important step toward full decriminalization in many countries. Yet important progress is still urgently needed—particularly in those criminalizing countries where a counter-trend toward deepening criminalization has taken hold or is being proposed. These moves, which are increasingly out of step with global and regional trends, pose a threat to efforts to end the global AIDS pandemic.

Where some see changes in these structural determinants of health as too hard or too complex, this report shows that investing in policy change and law reform efforts delivers results. This report documents how, in just the past few years, a wide variety of countries used different legal and political pathways to arrive at decriminalization—many of which seemed impossible not long ago. There is no one-size-fits-all route, but neither are there contexts in which removing criminalization is impossible. Indeed, delivering on the Sustainable Development Goals and the promise to leave no one behind will require more investment in this area—even where change seems difficult in the short term. Investment in legal support, government-to-government learning, and civil society advocacy can create the kinds of synergies detailed in this report.

Decriminalization alone is not sufficient to fully realize the public health benefits of an enabling legal environment—and here too this report shows further work is needed. Of those countries that do not criminalize, only about half have clear non-discrimination laws and policies and independent human rights institutions that are part of this broader effort. This, alongside increased investment in community-based and community-led services, is urgent to advance public health efforts.

Ultimately, this report shows the continued importance of a multisectoral AIDS response. Much of the change described here—critical for advancing toward global HIV targets—happened outside the health sector. Change is possible. Change is achievable. And, to end AIDS by 2030, change is necessary.

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